

1 THE HONORABLE BARBARA J. ROTHSTEIN
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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 The OFFICE CANTONAL DES FAILLITES
12 DE LA REPUBLIQUE ET DU CANTON
13 GENEVE, acting in its capacity as
14 representative in the bankruptcy of AMOMA
15 SARL, a Swiss limited liability company,

16 Plaintiff,

17 v.

18 EXPEDIA, INC.,

19 Defendant.

20 CASE NO. 2:23-cv-00983-BJR

21 **STIPULATED PROTECTIVE ORDER**

22 1. **PURPOSES AND LIMITATIONS**

23 Discovery in this action is likely to involve production of confidential, proprietary, or
24 private information for which special protection may be warranted. Accordingly, the Parties
25 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The
26 Parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
protection on all disclosures or responses to discovery, the protection it affords from public
disclosure and use extends only to the limited information or items that are entitled to confidential
treatment under the applicable legal principles, and it does not presumptively entitle parties to file
confidential information under seal.

STIPULATED PROTECTIVE ORDER

(Case No. 2:23-cv-00983-BJR) - 1

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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include documents and tangible things produced or otherwise
 3 exchanged constituting or reflecting: research, development, or commercial information
 4 qualifying for protection under Fed. R. Civ. P 26(c), trade secrets, business plans, corporate
 5 strategy, customer information, board minutes, financial documents, market share data, marketing
 6 and advertising plans and forecasts, and protected materials or any information that a party believes
 7 in good faith to be subject to federal, state, or foreign Data Protection Laws or other privacy
 8 obligations. Examples of such Data Protection Laws include, without limitation, The Gramm-
 9 Leach-Bliley Act, 15 U.S.C. § 6801 et seq. (consumer financial information); The Health
 10 Insurance Portability and Accountability Act and the regulations thereunder (HIPAA), 45 CFR
 11 Part 160 and Subparts A and E of Part 164 (medical information); Fair Credit Reporting Act
 12 (FCRA), 15 USC § 1681 et seq. (consumer financial information); Communications Privacy Act
 13 of 1986, 18 U.S.C. § 2511 (private communication); Genetic Information Non-discrimination Act
 14 of 2008 (GINA) (biometric information).

15 3. SCOPE

16 The protections conferred by this agreement cover not only Confidential material (as
 17 defined above), but also (1) any information copied or extracted from Confidential material; (2)
 18 all copies, excerpts, summaries, or compilations of Confidential material; and (3) any testimony,
 19 conversations, or presentations by parties or their counsel that might reveal Confidential material.

20 The Stipulated Protective Order shall govern all documents, testimony, and information
 21 contained therein, including all copies, excerpts, summaries, or compilations thereof, whether
 22 revealed in a document, deposition, other testimony, discovery response, or otherwise, that the
 23 producing Party produces to the receiving Party and that the producing Party designates as
 24 Confidential under this Stipulated Protective Order. However, the protections conferred by this
 25 agreement do not cover information that is in the public domain or becomes part of the public
 26 domain through trial or otherwise.

1 Nothing herein shall be construed as an admission or concession by any Party that material
 2 designated as Confidential, including any document, testimony, or information derived from
 3 material designated as Confidential, constitutes material, relevant, or admissible evidence in this
 4 matter. The entry of this Stipulated Protective Order does not preclude any Party from seeking
 5 further order of this Court, including modification of this Stipulated Protective Order, challenging
 6 of any Confidential designation as improper, or from objecting to discovery that the Party believes
 7 to be improper.

8 4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

9 4.1 **Basic Principles.** A receiving Party may use Confidential material that is disclosed
 10 or produced by another Party or by a non-party in connection with this case only for prosecuting,
 11 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
 12 categories of persons and under the conditions described in this agreement. Confidential material
 13 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
 14 that access is limited to the persons authorized under this agreement.

15 4.2 **Disclosure of “Confidential” Information or Items.** Unless otherwise ordered by the
 16 Court or permitted in writing by the designating Party, a receiving Party may disclose any
 17 Confidential material only to:

18 (a) the receiving Party’s counsel of record in this action, as well as employees
 19 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

20 (b) the officers, directors, and employees (including in house counsel) of the
 21 receiving Party to whom disclosure is reasonably necessary for this litigation;

22 (c) experts and consultants to whom disclosure is reasonably necessary for this
 23 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (d) the court, court personnel, and court reporters and their staff;

25 (e) persons or firms retained for the purpose of litigation support (e.g.
 26 professional vendors for copy or imaging services retained by counsel to assist in the duplication

1 of material designated as Confidential; audio and video recording; interpreting or translating;
 2 preparing exhibits or demonstratives; organizing, storing or retrieving data in any form or medium;
 3 jury consulting; mock trial coordination; litigation presentation (“hot seat”) technicians, etc.),
 4 provided that counsel for the receiving Party retaining such persons or firms instructs them not to
 5 disclose any material designated as Confidential to third Parties and to immediately return all
 6 originals and copies of any Confidential Material at the conclusion of their services or this
 7 litigation;

8 (f) during their depositions, witnesses in the action to whom disclosure is
 9 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
 10 (Exhibit A), unless otherwise agreed by the designating Party or ordered by the Court. Pages of
 11 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
 12 be separately bound and/or designated by the court reporter and may not be disclosed to anyone
 13 except as permitted under this agreement;

14 (g) the author or recipient of a document containing the information or a
 15 custodian or other person who otherwise possessed or knew the information.

16 4.3 Filing Confidential Material. Before filing Confidential material or discussing or
 17 referencing such material in court filings, the filing Party shall confer with the designating Party,
 18 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating Party will
 19 remove the confidential designation, whether the document can be redacted, or whether a motion
 20 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
 21 designating Party must identify the basis for sealing the specific Confidential information at issue,
 22 and the filing Party shall include this basis in its motion to seal, along with any objection to sealing
 23 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
 24 the standards that will be applied when a party seeks permission from the court to file material
 25 under seal. A Party who seeks to maintain the confidentiality of its information must satisfy the
 26 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the Party filing the motion to seal.

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1 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
 2 the strong presumption of public access to the Court's files. Nothing in this subsection will prohibit
 3 Parties from referencing the general character or category of Confidential material or the reasons
 4 for the confidentiality designations in Court filings, where doing so does not reveal specific matters
 5 reasonably deemed Confidential.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 8 or non-party that designates information or items for protection under this agreement must take
 9 care to limit any such designation to specific material that qualifies under the appropriate
 10 standards. The designating Party must designate for protection only those parts of material,
 11 documents, items, or oral or written communications that qualify, so that other portions of the
 12 material, documents, items, or communications for which protection is not warranted are not swept
 13 unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 15 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 16 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
 17 and burdens on other parties) expose the designating party to sanctions.

18 If it comes to a designating Party's attention that information or items that it designated for
 19 protection do not qualify for protection, the designating Party must promptly notify all other Parties
 20 that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 22 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or
 23 ordered, disclosure or discovery material that qualifies for protection under this agreement must
 24 be clearly so designated before or when the material is disclosed or produced.

25 (a) Information in documentary form: (e.g., paper or electronic documents and
 26 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),

1 the designating Party must affix the word “CONFIDENTIAL” to each page that contains
2 confidential material. If only a portion or portions of the material on a page qualifies for protection,
3 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
4 markings in the margins). With respect to all designated materials produced with an associated
5 load file, the producing Party will include the appropriate designation in the load file. With respect
6 to all designated digital files produced in native format, the producing Party will include the
7 appropriate designation in the filename or cover sheet.

19 5.3 Inadvertent Failures to Designate. Inadvertent or unintentional disclosure, without
20 the required confidentiality designation, of any document, testimony, or information that the
21 disclosing Party intended to designate as Confidential shall not be deemed a waiver in whole or in
22 part of the producing Party's claim of confidentiality, either as to specific documents and
23 information disclosed or as to the same or related subject matter.

24 In the event that a designating Party makes such an inadvertent production, that Party shall
25 contact the receiving Party within 30 days of the discovery of the inadvertent production, or as
26 promptly as reasonably possible thereafter, and inform the receiving Party or Parties in writing of

1 the inadvertent production and the specific material at issue. If timely corrected, an inadvertent
 2 failure to designate qualified information or items does not, standing alone, waive the designating
 3 Party's right to secure protection under this agreement for such material or for materials of the
 4 same or related subject matter. Upon timely correction of a designation, the receiving Party must
 5 make reasonable efforts to ensure that the material is treated in accordance with the provisions of
 6 this agreement.

7 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 6.1 Timing of Challenges. Any Party or non-party may challenge a designation of
 9 confidentiality at any time. Unless a prompt challenge to a designating Party's confidentiality
 10 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 11 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 12 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 13 original designation is disclosed.

14 6.2 Meet and Confer. The Parties must make every attempt to resolve any dispute
 15 regarding Confidential designations without court involvement. Any motion regarding
 16 Confidential designations or for a protective order must include a certification, in the motion or in
 17 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference
 18 with other affected parties in an effort to resolve the dispute without court action. The certification
 19 must list the date, manner, and participants to the conference. A good faith effort to confer requires
 20 a face-to-face meeting or a telephone/video conference.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 22 intervention, the designating party may file and serve a motion to retain confidentiality under Local
 23 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 24 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 25 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
 26 other parties) may expose the challenging party to sanctions. All Parties shall continue to maintain

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1 the material in question as confidential until the court rules on the challenge.

2 7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
 3 **LITIGATION**

4 If a Party is served with a subpoena or a court order issued in other litigation that compels
 5 disclosure of any information or items designated in this action as "Confidential," that Party must:

6 (a) promptly notify the designating Party in writing and include a copy of the
 7 subpoena or court order;

8 (b) promptly notify in writing the Party who caused the subpoena or order to
 9 issue in the other litigation that some or all of the material covered by the subpoena or order is
 10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 12 the designating party whose confidential material may be affected.

13 8. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 If a receiving Party learns that, by inadvertence or otherwise, it has disclosed Confidential
 15 material to any person or in any circumstance not authorized under this agreement, the receiving
 16 Party must immediately (a) notify in writing the designating Party of the unauthorized disclosures,
 17 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
 18 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
 19 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
 20 Bound" that is attached hereto as Exhibit A.

21 9. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
 22 **MATERIAL**

23 When a producing Party gives notice to receiving Parties that certain inadvertently
 24 produced material is subject to a claim of privilege or other protection, the obligations of the
 25 receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
 26 is not intended to modify whatever procedure may be established in an e-discovery order or

1 agreement that provides for production without prior privilege review. The Parties agree to the
 2 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

4 Within 60 days after the termination of this action, including all appeals, each receiving
 5 Party must return or destroy all Confidential material, including all copies, extracts and summaries
 6 thereof that are not part of the legal file. Confidential material saved in an electronically stored
 7 format on disaster recovery systems, will be certified to have been destroyed if the receiving Party
 8 has a data destruction policy resulting in the eventual destruction or overwriting of the
 9 electronically stored information.

10 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
 11 documents filed with the court, trial, deposition, and hearing transcripts, correspondence
 12 (including email), deposition and trial exhibits, expert reports, attorney work product, and
 13 consultant and expert work product, even if such materials contain Confidential material.

14 After the termination of this action by entry of a final judgment or order of dismissal
 15 (including without limitation any appeals and after the time for filing all appellate proceedings has
 16 passed), the provisions of this Stipulated Protective Order shall continue to be binding. This
 17 Stipulated Protective Order is, and shall be deemed to be, an enforceable agreement between the
 18 Parties, their agents, and their attorneys. The Parties agree that the terms of this Stipulated
 19 Protective Order shall be interpreted and enforced by this Court. The confidentiality obligations
 20 imposed by this agreement shall remain in effect until a designating Party agrees otherwise in
 21 writing or a court order otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: April 25, 2024

KELLER ROHRBACK LLP	MORGAN, LEWIS & BOCKIUS LLP
<p>4 By: <u>s/ Lynn Lincoln Sarko</u> 5 Lynn Lincoln Sarko, WSBA No. 16569 6 Adele Daniel, WSBA No. 53315 7 Ryan McDevitt, WSBA No. 43305 8 1201 3rd Avenue, Suite 3200 9 Seattle, WA 98101 Phone: (206) 623-1900 Email: lsarko@kellerrohrback.com adaniel@kellerrohrback.com rmcdevitt@kellerrohrback.com</p>	<p>4 By: <u>s/ Angelo J. Calfo</u> 5 Angelo J. Calfo, WSBA No. 27079 6 Ari M. Sillman, WSBA No. 60798 7 1301 Second Avenue, Suite 3000 8 Seattle, WA 98101 Phone: (206) 274-6400 Email: angelo.calfo@morganlewis.com ari.sillman@morganlewis.com</p>
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18 PURSUANT TO STIPULATION, IT IS SO ORDERED

19 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
20 documents, electronically stored information (ESI) or information, whether inadvertent or
21 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
22 state proceeding, constitute a waiver by the producing Party of any privilege applicable to those
23 documents, including the attorney-client privilege, attorney work-product protection, or any other
24 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
25 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.

26 STIPULATED PROTECTIVE ORDER

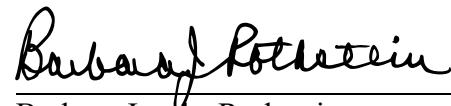
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1 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
2 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
3 segregation of privileged and/or protected information before production. Information produced
4 in discovery that is protected as privileged or work product shall be immediately returned to the
5 producing Party.

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7 DATED this 29th day of April, 2024.

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Barbara Jacobs Rothstein
U.S. District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of _____ **[insert formal name of the case and the number and initials
assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
10 not disclose in any manner any information or item that is subject to this Stipulated Protective
11 Order to any person or entity except in strict compliance with the provisions of this Order.
12

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 || Date:

17 | City and State where sworn and signed:

18 Printed name:

19 || Signature: